IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 256 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MISTRY MANILAL SHANKARLAL

Versus

PATEL DASHRATHLAL KESHAVLAL

Appearance:

MR PN BAVISHI for Appellant

..... for Respondent No. 1-4

MR MANISH R RAVAL for Respondent No. 5

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/07/2001

ORAL JUDGEMENT

1. Heard learned Advocate Mr.P.N Bavishi for appellant and learned Advocate Mr.M.R.Raval for respondent No.5 as a Caveator.

2. This Appeal From Order is preferred against the judgment and order dated 4th June, 2001 pronounced by Third Jt. Civil Judge (SD), Mehsana, below Application Exh.5 in Spl. Civil Suit No. 31 of 2001. Present

appellant is plaintiff while present respondents were defendants in original suit. Appellant filed the above said Spl. Civil Suit stating that at Village Palavasan, Taluka & District Mehsana, land bearing Survey No. 329/3, Block No.400, admeasuring 0 acres 31 gunthas owned by respondents No.1 to 4 was agreed to be sold by respondents No. 1 to 4 to the plaintiff - appellant vide agreement dated 6th November, 1989. The amount of consideration was fixed at Rs. 1,31,000. Out of which, Rs. 31,000/- was paid by plaintiff to respondents No. 1 to 4. It was agreed that this land was to be converted in non-agricultural land within six months from the date of execution of the agreement i.e. on 6th May, 1999 and after that paying the remaining amount of consideration by the appellant, respondents No. 1 to 4 were required to execute a sale deed in favour of the plaintiff. It was also agreed between the parties on insistence of plaintiff - appellant that respondents No.1 to 4 were required to obtain title clearance certificate in respect of the suit land from Government recognised solicitors and it was also agreed that if respondents No. 1 to 4 fail to obtain N.A. permission within six months from the date of execution of agreement, then time was to be extended my mutual understanding for conversion of land in N.A. It is a case of the plaintiff - appellant that he approached to respondents No. 1 to 4 in person but neither respondents No. 1 to 4 took any step to convert the land in N.A. nor the title of the property was made clear to the extent that the required certificate was not

obtained. It is alleged that respondents No. 1 to 4 intentionally did not execute the sale deed and committed breach of terms of agreement dated 6th November, 1989. Lastly, as per the plaintiff, he met respondents No. 1 to 4 on 31st December, 1996 and allegedly respondents No. 1 to 4 replied that the plaintiff would be informed about the conversion of land at Borsad. It is the case of the plaintiff that thereafter vide registered document dated 16.01.1997, for meagre consideration of Rs. 40,000/respondents No. 1 to 4 sold this land to respondent No.5. It was alleged that due to heavy escalation in price of land, respondents No. 1 to 4 never intended to abide by the agreement executed between

the parties and by camouflaged document, the land is sold to respondent No.5. Therefore, the suit is filed for the specific performance of the agreement dated 6th of November, 1989, in which an application Exh.5 came to be filed for interim injunction against all the respondents. Temporary injunction was also sought against respondent No.5, restraining him from transferring the suit property, converting the same in NA, restraining from making any construction and to maintain status quo with respect to the land. At the first instance, learned Trial Judge was pleased to order to maintain status quo in respect to the suit land vide his order dated 1st March, 2001 which was vacated by final order dated 4th June, 2001, by which Application Exh.5 of the plaintiff was rejected and the same order is impugned in this Appeal From Order.

3. Learned Advocate Mr.P.N.Bavishi has vehemently argued that the respondents No. 1 to 4 have committed breach of the terms of the agreement, particularly, condition No. 5 of the agreement regarding obtaining title clearance certificate from Government recognised Solicitors was breached and that it was the duty of the respondents No. 1 to 4 to get the land converted in N.A. within six months, but the same was not done. It is urged that the time was extended even then the land could not be converted in N.A. use by respondents No. 1 to 4. Suddenly, the land came to be sold by respondents No. 1 to 4 to respondent No.5 on 16th January, 1997 and thereafter there was exchange of notices between plaintiff and respondent No.1 and ultimately the suit came to be filed on 22nd of February, 2001.

4. To evaluate the facts of the case certain dates are material i.e. the plaintiff - appellant entered into an agreement on 6th of November, 1989. The sale deed accordingly was to be executed on 6th of May, 1990. According to the terms fixed, within that period, respondents No. 1 to 4 were required to convert the land in N.A. use. Now it is the case of the plaintiff appellant that orally and personally the respondents No. 1 to 4 were approached but every time they assured to the plaintiff that as soon as the land is converted in N.A.

use, the plaintiff - appellant shall be informed and the document will be executed. On 16th of January, 1997,

document of sale came to be executed between respondents No. 1 to 4 and respondent No.5.

5. From the facts it clearly appears that plaintiff appellant has slept over his right. There is nothing on the record to denote that right from 6th of November, 1989 and thereafter from 6th May, 1990, till 16th January, 1997, whether any attempts were made by the plaintiff - appellant to get the document executed. On record, there is only oral say of the plaintiff appellant that he made attempts to get the document executed. Therefore, there is delay in taking action on the part of the plaintiff appellant. Mere say on behalf of the plaintiff appellant that the plaintiff approached the respondents during these years right from 6th May, 1990 to 16th January, 1997 for conversion of the land and for execution of the document is not palatable. Notices were exchanged only after 16th January, 1997 when the document was executed between respondents No. 1 to 4 and Respondent No.5. True it is that time is not the essence of the contract but one can wait for reasonable time for the execution of the document agreed to be executed. However 7 years delay coupled with mere oral say of the plaintiff - appellant would not result in prima facie case of the plaintiff to the extent that he was ready and willing to perform his part of the contract. Learned Advocate Mr. Bavishi has cited a case of the High Court of Bombay in the case of SHANTABHAI vs. MANAKCHAND

RATANCHAND RAKA, reported in AIR 1988 Bom. 82. It is urged that the facts of thIS case are squarely covered by the facts of the said case, but that is not so. The agreement in question in the Bombay case came to be executed on 20th April, 1971 and when the land was not converted by the defendant - seller in NA use, plaintiff of that case gave a notice to the defendant dated 11th July, 1972 calling upon the defendant to perform his part of the agreement. I do not find this part in the facts of the present case. On the contrary, the plaintiff appears to have lost his right by sleeping over for about 7 years.

6. In this view of the matter, since there is no prima facie case in favour of the plaintiff appellant, the learned Trial Judge has rightly rejected Exh.5 application. I do not see any reason to interfere with the order of the learned Trial Judge which is impugned in this matter. In the result, this Appeal is dismissed summarily.

(J.R. Vora, J.)

p.n.nair